

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SCOTT BOEHM; DAVID STLUKA,

Plaintiffs,

v.

ORDER

14-cv-16-jdp

DAN ZIMPRICH; CIARA ZIMPRICH;
LEGENDS OF THE FIELD, LLC;
SPORTS PLUS, LLC; GAMEDAY SPORTS;
and RICHARD MONCHER,

Defendants,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY; ACUITY,
A MUTUAL INSURANCE COMPANY,

Intervenor Defendants.

The court held a telephonic hearing on December 18, 2014, to discuss resolution of the remaining issues in the case following its order on the motions for partial summary judgment. Counsel for the actively participating parties appeared; defaulting parties Gameday Sports and Richard Moncher did not appear. The court issues this order to confirm the resolution of the issue raised at the hearing.

The parties are required to jointly file a chart identifying each photo at issue in this case by the deadline provided below. The chart should include, for each photo: an appropriate identification of the photo; the copyright registration information including the date of registration; the defendants alleged to have infringed it; the dates of infringement; the nature and extent of the infringement; and the type of damages sought. The parties are encouraged to stipulate to as much information in the chart as possible, and they must identify any facts that remain in dispute.

In addition to the chart described in the previous paragraph, each party must also submit a list of issues to be resolved at trial, by the deadline provided below.

Plaintiffs contend that Sports Plus has demonstrated willfulness by conduct that was not known to plaintiffs or presented to the court on summary judgment. Plaintiffs may move for reconsideration of the court's decision on Sports Plus's willfulness by the deadline provided below. Any such motion by plaintiffs will have to show why plaintiffs, through the exercise of reasonable diligence, could not have presented the issue to the court in time to respond to Sports Plus's motion for partial summary judgment on the willfulness issue. Sports Plus will have one week to respond to any such motion. Plaintiffs will have no reply unless requested or approved by the court.

Counsel for Sports Plus raised a potential issue concerning the timing of plaintiffs' counsel's admission to this court, which Sports Plus contends affects plaintiffs' entitlement to attorney fees. If Sports Plus intends to press this issue, it should do so with a motion in limine.

Intervenor defendant Acuity sought leave to amend its pleadings to add the applicable policies for Sports Plus. The court granted this request. All previous pleadings made in response to Acuity's original pleading, Dkt. 94, will be deemed to be responsive to Acuity's amended pleading.

The parties should promptly disclose to each other all information needed to bring this case to a conclusion. Plaintiffs should identify any newly asserted photos, and produce copies of pertinent copyright registrations and any agreement relating to rights to those photos, as soon as possible and in no case later than January 9, 2015. The Zimpriches, Legends of the Field, and Sports Plus should produce documentation of all uses of plaintiffs' photographs, as soon as possible and in no case later than January 2, 2015, or within two weeks of plaintiffs'

identification of any newly asserted photo. If any of these defendants lack documentation of their uses of plaintiffs' photos, they should so certify to plaintiffs by the deadlines provided.

Plaintiffs indicate that they will exercise their right to a jury to resolve all outstanding issues, including statutory damages.

None of the dates provided in the court's updated schedule, Dkt. 170, changed. However, to include the matters addressed at the hearing, here is the fully updated schedule:

January 2, 2015

- Deadline for defendants to produce information regarding their use of plaintiff's photos

January 9, 2015

- Discovery cut-off
- Deadline for plaintiffs to produce information regarding their ownership, registration, and any transfer or restriction of rights to any newly asserted photos

January 16, 2015

- Deadline for plaintiffs to file any motion for reconsideration of the summary judgment opinion relating to Sports Plus's willfulness
- Deadline for plaintiffs to assert new photos infringed; defendants' already-filed responsive pleadings will be deemed to apply to the new photos

January 23, 2015

- Deadline for Rule 26(a)(3) disclosures, all motions in limine, proposed jury instructions, voir dire and verdict form
- Deadline for responses to any motions for reconsideration
- Deadline for parties to file a joint chart of asserted photos and alleged infringements
- Deadline for each party to file a list of issues to be resolved at trial
- Deadline for all parties to submit settlement letters

January 30, 2015

- Deadline for responses to the January 23, 2015 submissions

February 3, 2015, 4:00 p.m.

- Final Pretrial Conference

February 9, 2015, 9:00 a.m.

- Trial

Entered December 19, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge